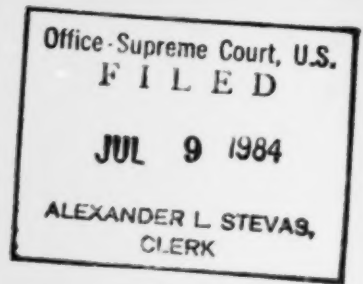


84-234 (1)



No.

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

* * * * *

Ross C. Wilkinson, Petitioner

v.

L. Joyce Hampers, Respondant

* * * * *

On Writ of Certiorari to the United States
Court of Appeals for the First Circuit

PETITION FOR WRIT OF CERTIORARI

ROSS C. WILKINSON
Petitioner pro se

695 John Muir Drive
Apartment No. 416
San Francisco, California 94132
(415) 334-5460

32P8



I. QUESTIONS PRESENTED

1. Can Congress augment paper money, not designed or intended to ever be redeemable in specie, with the status of legal-tender for debts? (28 U.S.C. S.2403(a) may be applicable and the below court has certified to the Attorney General the fact that 31 U.S.C 5103 was drawn in question.)

2. Is state emission of a check upon bank-deposits an emission of a bill of credit prohibited by the Constitution?

3. Is tender of a check upon bank-deposits a legal tender for debts?

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No.

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1984

* * * * *

Ross C. Wilkinson, Petitioner

v

L. Joyce Hampers, Respondant

* * * * *

PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

* * * * *

Petitioner, respectfully prays that a writ of
certiorari issue to review the judgement of
the United States Court of Appeals for the
First Circuit entered on March 12, 1984.

IV. OPINIONS BELOW

The Opinion of the First Circuit Court is within the Appendix at 3a; the Memorandum of the U.S. District Court in Boston is within the Appendix at 9a.

V. STATEMENT OF JURISDICTION

Date of decree to be reviewed: March 12, 1984.

Date of Order denying rehearing: April 10, 1984.

Statutory Jurisdictional Authority: Section 240, U.S. Judicial Code(36 Stat. 1087) as revised(43 Stat. 938).

VI. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const., Art. I, Sec. 10, Cl. 1.

No State shall * * * coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; * * * .

42 U.S.C. 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the

jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress * * * .

31 U.S.C. 5103

United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts.

28 U.S.C. 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States

VII. STATEMENT OF THE CASE

The State of Massachusetts owes Petitioner a debt in the amount of 368.51 Dollars (plus interest) in recompense for wrongful withholding of a portion of Petitioner's salary as for State income tax purposes for the tax and calendar year 1980.

The State Revenue Department, in May of 1981, mailed a check to Petitioner which named Petitioner as payee and ordered payment in the

amount "368 DOLLARS" and ".51 CENTS[sic]" and which was drawn against its account at the Arlington Trust Company of Lawrence, Massachusetts.

Petitioner, desiring payment in legal-tender, promptly thereafter notified the State's Attorney General that Petitioner was refusing the State's check and requested that the Attorney General cause the Department of Revenue to retender payment of its debt in gold or silver coin--the form of legal-tender most PREFERRED by Petitioner--in exchange for return of the State's check.

The State, through its then former Commissioner of Revenue, Respondant herein, refused to retender payment of its debt in ANY form of legal-tender WHATSOEVER.

Petitioner consequently filed a complaint with the U.S. District Court seeking a money judgement for the amount owed plus interest to be paid EITHER in gold and silver coin OR in some other form of legal-tender and for a

declaratory judgement prohibiting Respondant from ever submitting AS A LEGAL-TENDER anything other than gold or silver coin in payment of State debt and from causing the State to emit any bill of credit, including any check or warrant, in accord with the related proscription of Art. I, S.10 of the Constitution. Petitioner improperly (State not a party) also included a request for declaratory judgements against the state itself which he later withdrew.

The State Attorney General, acting as consul for Respondant, moved for dismissal or summary judgement arguing that the 11th Amendment provided Respondant with the State's sovereign immunity from suit and that Petitioner had failed to state a claim upon which relief could be granted.

The District Court allowed this motion and opined that (i) the State's check was not a bill of credit but, rather, a "negotiable instrument" and (ii) the State's check,

because it was supposedly exchangeable for Federal Reserve notes, was somehow "equivalent" to a legal tender.

Petitioner moved the court to vacate its dismissal citing authorities in opposition to the court's expressed reasons above for the dismissal and, though the court had not cited a single authority of its own in support of its reasoning, the motion to vacate was denied without comment.

Petitioner then appealed to the Circuit Court which sustained the District Court, also without addressing or even acknowledging the arguments presented by Petitioner specifically in opposition to the District Court's stated reasoning above. In addition, the Circuit Court declared Petitioner's appeal to be frivolous (see also IX, WHY THESE QUESTIONS ARE NOT FRIVOLOUS).

Petitioner now asks this Court for certiorari declaring that he has been denied due process of law because neither the District nor

Circuit courts addressed themselves to the specific arguments which were the entire bases for his appeal to the Circuit Court, and further, that the Circuit Court was wrong in holding his appeal to be frivolous

VIII. ORIGINAL JURISDICTION

This case was originally presented to the United States District Court as a civil action arising under the Constitution and laws of the United States as per 28 U.S.C. 1331 and 42 U.S.C. 1983.

IX. ARGUMENT

BASES FOR REVIEW HERE

The Circuit Court of Appeals has decided an important federal question in conflict with applicable decisions of this Court and has significantly departed from the usual and accepted course of judicial proceedings so as to call for an exercise of this Court's power of supervision. In more particular, as to the former charge, the Circuit Court has incorrectly construed this Court, in its

several decisions known collectively as The Legal Tender Cases (75 U.S. 603; 79 U.S. 457; 110 U.S. 421), by failing to recognize that These decisions were applicable ONLY to paper money designed and intended to be REDEEMABLE IN SPECIE COIN and that this Court had expressly limited its decisions to this construction. As to the latter charge, the Circuit Court TOTALLY DISREGARDED Petitioners specific arguments as to why a check is not equivalent to legal-tender and as to why The Legal Tender Cases do not show Congress to have any authority to make NON-SPECIE-BACKED paper money a legal tender and why the decisions of several courts below this Court err on this point, the whole basis of his appeal, therefore. Together, these failings below constitute substantial bases for review by this Court.

ISSUES

1. CONGRESS CANNOT MAKE PAPER MONEY, NOT DESIGNED OR INTENDED TO EVER BE REDEEMABLE IN SPECIE, A LEGAL TENDER FOR DEBTS AND, THEREFORE, FEDERAL RESERVE NOTES ARE NOT A LEGAL TENDER.

This Court has declared that:

The making of notes or bills of credit a legal tender in payment of preexisting debts is not a means appropriate, plainly adapted, or really calculated to carry into effect any express power vested in Congress, is inconsistent with the spirit of the Constitution, and is prohibited by the Constitution. *Hepburn v Griswold*, 75 US 603.

Subsequently, this Court reversed itself BUT ONLY INSOFAR AS PAPER MONEY REDEEMABLE IN SPECIE WAS CONCERNED stating:

It[previous issue of paper money under the Legal Tender Acts of 1862 & 1863 (e.g. 12 Stat. 345) with specie redeemability TEMPORARILY suspended] is not an attempt to coin money out of a valueless material like the coinage of leather or ivory or kowrie shells. It is a pledge of the national credit. It is a promise by the government to PAY[emp.] dollars; IT IS NOT AN ATTEMPT TO MAKE DOLLARS[emp.]. The standard of value is not changed. The government simply demands that its CREDIT[emp.] shall be accepted and received by the public and private creditors during the pending exigency * * * No one supposes that these government CERTIFICATES[emp.] are never to be paid--that the day of specie payments is never to return * * * [that] Through

whatever changes they pass, their ultimate destiny IS TO BE PAID[sic]. Knox v Lee, 79 US 457, 560, 561, 562.

Concerning the Legal Tender Acts themselves, this Court also stated:

It is, then, a mistake to regard the legal tender acts as * * * making that money which has no intrinsic value. Knox v Lee, supra, 553.

Despite such qualification by this Court(limiting its conclusion that Congress may make paper money a legal tender to only paper money INTENDED TO BE REDEEMABLE IN SPECIE), the courts below(and other courts in preceeding matters) WRONGLY construe this Court's decisions in the Legal Tender Cases to show that Congress may make paper money NOT redeemable in specie(such as Federal Reserve notes) a legal tender. Yet, this Court has never so ruled.

In fact, there are compelling reasons why this Court should find otherwise. Such reasons are clearly presented in The Legal Tender Cases and by various others and will not be

repeated here. Suffice it to say that the emission of an unbacked currency, either as paper money or as bank deposits, is a means which has historically been used by governments to tax their subjects without their knowledge or consent.

By a continuing process of inflation, governments can confiscate, secretly and unobserved, an important part of the wealth of their citizens. There is no subtler, no surer means of overturning the existing basis of society than to debauch the currency. The process engages all the hidden forces of economic law on the side of destruction, and does it in a manner which not one man in a million is able to diagnose. John Maynard Keynes (Economic Consequences of the Peace, 1920)

The U.S. government does perform the immoral act of debasing its currency, as Petitioner will show if given the opportunity, though it could not make such debased currency a legal tender if The Legal Tender Cases were properly construed.

This Court may take heed of the opinions of several of our great forefathers:

Most unquestionably there is no legal

tender, and there can be no legal tender, in this country, under the authority of this government or any other, but gold and silver, either the coinage of our own mints, or foreign coins, at rates regulated by congress[sic]. THIS IS A CONSTITUTIONAL PRINCIPLE, PERFECTLY PLAIN, AND OF THE VERY HIGHEST IMPORTANCE[emp.]. The states are expressly prohibited from making anything but gold and silver a tender in payment of debts; and although no such express prohibition is applied to congress, yet as congress has no power granted to it, in this respect, but to coin money and to regulate the value of foreign coins, it clearly has no power to substitute paper, or anything else, for coin, as a tender in payment of debts and in discharge of contracts. congress has excercised this power, fully, in both its branches. It has coined money, and still coins it; it has regulated the value of foreign coins, and still regulates their value. The legal tender, therefore, the constitutional standard of value, is established and cannot be overthrown. To overthrow it, would shake the whole system. The constitutional TENDER[sic] is the thing to be preserved, AND IT OUGHT TO BE PRESERVED SACREDLY, UNDER ALL CIRCUMSTANCES[emp.]. Webster (Works, IV, 271. See Sherman, 86).

* * * But if what is us'd as a MEDIUM OF EXCHANGE[sic] is fluctuating in its Value[sic] it is no better than unjust Weights[sic] and Measures[sic], both of which are condemn'd by the Laws[sic] of God and Man[sic], and therefore the longest and most universal Custom[sic] could never make the Use[sic] of such a MEDIUM[sic] either lawful or reasonable. Roger Sherman (Sherman, pl5).

The laws of a country ought to be the standard of equity and calculated to impress on the minds of the people the moral as well as the legal obligations of political justice. But tender laws, of any kind, operate to destroy morality, and to dissolve by the pretense of law what ought to be the principle of law to support, a reciprocal justice between man and man; and the punishment of a member who should move for such a law ought to be DEATH[sic]. Thomas Paine (Disertations on Government, Vol. I, 407. See Bancroft, p82).

The federal government--I deny their power to make paper money a legal tender. Thomas Jefferson (Works, IV. 260. See Bancroft, p88).

Thus, while Congress MAY make a REDEEMABLE paper money a legal tender (such as all pre-1963 issues and Silver Certificates until 1968), nevertheless, it MAY NOT make a permanently IRredeemable paper money a LEGAL TENDER and, therefore 31 USC 5103 which purports to make Federal Reserve notes a legal tender is UNCONSTITUTIONAL.

2. STATE EMISSION OF A CHECK IS, LIKEWISE, STATE EMISSION OF A BILL OF CREDIT PROHIBITED BY THE CONSTITUTION.

The states are prohibited from emitting bills of credit by the following provision of the

Constitution:

Art. I, S. 10. No State shall * * * emit bills of credit; * * * .

A bill of credit is a promise or order to pay money as further described below.

To emit bills of credit was, therefore, for a state to issue its paper, payable on demand, or redeemable at a future day and intended to circulate as money. Bragg v Tuffts, 6 SW 158, 49 Ark 563.

Bills of credit signify a paper medium intended to circulate between individuals, and between government and individuals, for the ordinary purposes of society. Craig v Missouri, 4 Pet. 410, 432, 7 L.Ed. 903.

To constitute a bill of credit within the Constitution, it must be issued by a state, on the faith of a state, be designed to circulate as money, be a paper which circulates on the credit of the state, and is so received and used in the ordinary business of life. Brisco v Ken. Bank, 36 US 257, 11 Pet. 257, 9 L.Ed. 709.

Though state submittal of a "bank check", a liability of the drawer bank rather than the state payer, would not be a prohibited emission because the payee would have recourse against the drawer bank, in this case, the State did not submit a "bank check" as

incorrectly assumed by the District Court but, rather, an ORDINARY check upon its OWN accounts for which it alone is responsible. Also, as any check can, and usually is, multiply endorsed and received, the State's check meets all of the above tests and, although the Uniform Commercial Code catagorizes checks as so called "negotiable instruments", still, checks are bills of credit within the constitutional proscription above and, therefore, THE STATE'S CHECK CONSIDERED HEREIN IS A PROHIBITED BILL OF CREDIT.

3. A CHECK IS NOT A LEGAL TENDER FOR DEBTS.

It is a general rule of tender and payment that a check is not legal tender as against an objection duly made. Gaunt v Alabama B. Oil & G. Co., 281 F 653, 23 ALR 1279.

A debtor's giving his draft, bill of exchange, or check for an obligation * * * is merely conditional payment of the obligation, in the absence of an agreement to the contrary. Wasilauskas v Brook. Sav. Bank, 259 Mass 215, 156 NE 34, 52 ALR 758.

The buyer of goods at the time and place of payment should be prepared to pay in lawful

money, and HAS NO RIGHT TO REQUIRE THE [seller] TO ACCEPT A CHECK[emp.]. Beauchamp v Archer, 58 Cal 431; Farris v Ferguson, 146 Tenn 498, 242 SW 873, 23 ALR 624.

A draft or check is not an assignment of funds. Beauchamp(supra); Hughes v Knott, 138 NC 105, 50 SE 586; Farris(supra).

A check is not rendered absolute payment by reason of there being sufficient funds in the obligor's account to cover it. Hickerson v Con Frazier Buick, 264 SW2d 29.

Where a money obligation is met by check *
* * the debt is not discharged until the
check is paid, or the check is accepted at
the bank at which it is made payable * * * .
Summit Mall, Inc. v Guran, 7 Oh App 2d 53,
36 Oh Ops 2d 148, 218 NE2d 637.

There is no basis for Respondant's
presumption that submittal of a check is,
likewise, submittal of Federal Reserve notes
either in fact or effect and, therefore,
notwithstanding the argument to Question 1
above, the STATE'S CHECK WAS NOT A LEGAL
TENDER HEREIN.

WHY THESE QUESTIONS ARE NOT FRIVOLOUS

No court has ever addressed itself to the
essencial issues of this petition, as
expressed by Questions 1 and 2 herein, WITH

CONSIDERATION OF THE EXPRESSED PURPOSE OF THIS COURT as described above and thus have misconstrued The Legal Tender Cases; and, though Question 3 herein has been well and consistently settled by state courts, yet, as the District and Circuit Courts have defied that precedent and as state courts are prohibited from declaring when NON-SPECIE-BACKED paper money CAN be a legal tender--even if such money WAS, hypothetically, a valid legal tender--due to the Art. I, S.10 proscription "No State * * * shall make any Thing but gold and silver Coin a Tender in Payment of Debts; * * *," they are not competent to settle that issue. All such questions concerning the validity of any nonspecie money as a legal tender must, therefore, be resolved by federal courts and, as both federal courts below are, herein, at odds with the greater body of state opinion, Question 3 is not frivolous.

Date: July 6, 1984

Respectfully submitted by: Ross. C. Wilkinson

1a

ORDER OF THE UNITED STATES COURT OF APPEALS
DENYING PETITION FOR REHEARING

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 83-1724

ROSS C. WILKINSON,
Plaintiff, Appellant,

L. JOYCE HAMPERS,
Defendant, Appellee.

Before
CAMPBELL, Chief Judge,
COFFIN AND BOWNES, Circuit Judges.

ORDER OF COURT

Entered April 10, 1984

The appellant's petition for rehearing is
denied.

By the Court:

FRANCIS P. SCIGLIANO

Clerk

JUDGEMENT OF THE UNITED STATES COURT OF
APPEALS RESULTING IN THIS PETITION

[caption as above, omitted]

JUDGEMENT

Entered March 12, 1984

This cause came on to be submitted on briefs
on appeal from the United States District
Court for the District of Massachusetts.

Upon consideration whereof, It is now here
ordered, adjudged, and decreed as follows:

The order of the District Court is affirmed.
Double costs are awarded to the appellee.
Fed.R.App.P. 38.

By the Court

Francis P. Scigliano

Clerk

OPINION OF THE UNITED STATES COURT OF APPEALS
IN SUPPORT OF ITS JUDGEMENT

[caption as above, omitted]

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Joseph L. Tauro, U.S. District Judge]

Before

Campbell, Chief Judge,
Coffin and Bownes, Circuit Judges.

Ross C. Wilkinson on brief, pro se.
Francis X. Bellotti, Attorney General, and
Despena Fillios Billings, Assistant Attorney
General, Government Bureau, on brief for
appellee.

March 12, 1984

PER CURIAM. The pro se plaintiff, Ross
Wilkinson, appeals from the district court's
dismissal of his complaint for failure to
state a claim.

The complaint makes the following
allegations: The defendant, formerly the
Commissioner of the Massachusetts Department
of Revenue, sent the plaintiff a "bill of
credit payable to [p]laintiff" in the amount
of \$368.51, the amount the Department of

Revenue owed the plaintiff. This "bill of credit" was issued in violation of Art. I, S. 10 of the United States Constitution. Instead of submitting payment with this "bill of credit," the Department of Revenue was required by Art. I, S. 10 to pay the plaintiff in gold or silver coin. The plaintiff requested relief in the form of payment of the amount due in gold or silver coin and requested a declaratory judgement that the Department of Revenue may not pay its debts by issuance of any "bill of credit including any check or warrant."

The defendant submitted a motion to dismiss the complaint for failure to state a claim or alternatively for summary judgement. The defendant argued in part that the claim is barred by the Eleventh Amendment to the United States Constitution.

To avoid any Eleventh Amendment bar to this action the plaintiff argued to the district court and in his reply brief here that this

suit is not against a state agency or against the defendant in her official capacity but only against the defendant in her individual capacity. The district court correctly treated the complaint as one against the defendant in her official capacity. If, instead, it had treated the complaint as against the defendant in her individual capacity, then dismissal for failure to state a claim would have been the only course for the district court to take.

Art. I, Sec. 10 of the United States Constitution would then not be applicable, for by its terms the provision prohibits only acts by a state.[1] In addition, the relief requested could only be granted against the defendant in her official capacity.[2]

The district court reasonably construed the complaint as stating that the Department of revenue paid the plaintiff in the form of a check redeemable at any bank for federal reserve notes. Such notes are legal tender for all debts, public and private. See e.g., Legal

Tender case, 110 U.S. 421, 444-448(1884);
 United States v. Rifen, 577 F.2d 1111,
 1112-1113 (8th Cir. 1978); United States v
 Wangrud, 533 F.2d 495, 495-496 (9th Cir.),
 cert. denied 429 U.S. 818 (1976); Kauffman v.
 Citizen's Bank of Loyal, 102 Wis.2d 528, 307
 N.W.2d 325, 327-328 (1981); Chermack v.
 Bjornson, 302 Minn. 213, 223 N.W.2d 659,
 660-661 (1974), cert. denied 421 U.S. 915
 (1975). See also Milam v. United States, 524
 f.2d 629, 630 (9th Cir. 1974). 31 U.S.C. Sec.

5103. The state engaged in no action
 prohibited by Art. I, Sec. 10 when it merely
 used a form of payment authorized by Congress.
 See Kauffman, 307 N.W.2d at 328; Chermack, 223
 N.W.2d at 661. Thus, the district court was
 correct in dismissing the complaint for
 failure to state a claim.

Affirmed. Because this appeal is frivolous,
 double costs are awarded to the appellee.

Fed.R.App.P. 38.

1. Art. I, Sec. 10 provides in relevant part, "No

State shall ... emit Bills of Credit; Make any Thing but gold and silver Coin a Tender in Payment of Debts ..."

2. The district court did not consider whether the action was barred by the Eleventh Amendment, and we do not reach that issue here. It may be that the Eleventh Amendment is not a bar where the plaintiff does not seek a payment from the treasury for damages or restitution but seeks only to have the payment--which the state admits it owes--put in a particular form. In addition, the plaintiff seeks declaratory relief.

ORDER BY THE UNITED STATES DISTRICT COURT
DISMISSING THE ORIGINAL CIVIL ACTION

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROSS C. WILKINSON

v.

L. JOYCE HAMPERS

CIVIL ACTION NO.
82-3529-T

ORDER OF DISMISSAL

TAURO, D.J.:

Pursuant to a Memorandum and Order entered by the Court on May 5, 1983;

IT IS HEREBY ORDERED that the captioned action be and hereby is DISMISSED.

By the Court
Mary L. Caughlin
DEPUTY CLERK

Dated: September 6, 1983

MEMORANDUM(AND VOID ORDER) BY THE UNITED STATES DISTRICT COURT FROM WHICH ITS ORDER OF SEPTEMBER 6, 1983 WAS DERIVED

[caption as above, omitted]

MEMORANDUM AND ORDER

TAURO, D.J. May 5, 1983

Plaintiff brings this action against L. Joyce Hampers, former Commissioner of the Massachusetts department of Revenue (MDR). In his pro se complaint, plaintiff alleges that under Article I S. 10 of the United States Constitution, the MDR is required to pay out his 1980 tax refund of \$368.51 in gold or silver coins rather than in the form of the bank check which was issued to him. Plaintiff also seeks declaratory relief requiring that the MDR may pay its debts only in gold or silver coins, and preventing MDR from issuing any "bill of credit, including a check or warrant."

Defendant has moved to dismiss on the grounds that (1) the suit is essentially one against the Commonwealth of Massachusetts and thus, is barred by the 11th Amendment and (2) plaintiff

has failed to state a claim upon which relief may be granted. Plaintiff has responded by seeking to quash the "illegal intervention" of the Attorney general's office, and moving for a stay of proceedings pending the outcome of the motion to quash.

The Attorney general's participation in this suit is entirely appropriate, and thus, plaintiff's motion to quash is denied. Further, inasmuch as plaintiff has simply failed to state a claim upon which relief may be granted, the motion to stay proceedings is denied. Under Article 1 S.10 of the Constitution, "[n]o state shall...emit a[sic] bill[sic] of credit; make any Thing but gold and silver Coin a Tender in Payment of debts,...." Defendants point out that contrary to plaintiff's allegation, the check issued to him is not a "bill of credit" but rather, a negotiable instrument under S.3-104(1) of the Uniform Commercial Code, redeemable for legal tender. Further, while "no state" may

substitute anything for payment in gold or silver coins, the Congress may, and in fact, has done so. Under 31 U.S.C. S.392, legal tender has been defined to include,"[a]ll coins and currencies of the United States (including Federal Reserve notes....)...." The check issued to plaintiff is redeemable for Federal Reserve notes and is, therefore, equivalent to legal tender.

Finally, in accordance with Congressional action[1], courts have recognized that obligations for payment in gold or silver coins are against public policy, and that a state may utilize the standard of legal tender prescribed by Congress without running afoul of the Article 1 S.10 proscription. See *Chermack v. Bjornsen*, 223 N.W. 2d 659 (Minn. 1974), cert. denied 421 U.S. 915 (1975) (Supreme Court of Minnesota affirmed lower court dismissal of claimant seeking tax refund in gold or silver coins); accord *United States v. Wangrud*, 553 F.2d 495 (9th Cir. 1976)

11a

(Ninth Circuit affirmed plaintiff's conviction for tax evasion, rejecting his claim that the checks he received from his employer were not redeemable in specie). Plaintiff has failed to state a claim.

The court, therefore, grants defendants motion to dismiss.

It is so ORDERED.

J. Tauro

United States District Judge

1. Congress provided in 31 U.S.C. S.463 that:
Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency,... is declared to be against public policy...."